SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-914

BELLE FEW THOMPSON, et al.,

Petitioners,

v.

MAX SHEPPARD, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO AMEND THE PETITION FOR A WRIT OF CERTIORARI

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Petitioners Belle Few Thompson, et al., respectfully move this Court for leave to amend their Petition for a Writ of Certiorari to add the following additional question presented:

> Did the District Court, having found a pattern of discrimination on the basis of sex in the selection of grand and petit jurors, provide the "detailed and stringent injunctive relief" required by *Carter* v. *Jury Commission,* 396 U.S. 320 (1970), or establish jury panels reflecting "a fair cross-section of the community" as required by *Taylor* v. *Louisiana,* 43 U.S.L.W. 4167 (1975), when it exempted from jury service all women not desiring to serve?

In support of this motion petitioners set forth the following grounds:

1. The Petition for a Writ of Ceriorari in the instant case was printed on January 21, 1975, and filed on January 23, 1975. This Court's decision in *Taylor* v. *Louisiana*, 43 U.S.L.W. 4167, was announced on January 21, 1975 and was received by counsel on January 24, 1975. Thus this Court's decision in *Taylor* v. *Louisiana* presents for all practical purposes a subsequent development.

2. Prior to the decision in *Taylor*, this Court had expressly upheld the automatic granting to women of an exemption from jury service, *Hoyt* v. *Florida*, 368 U.S. 67 (1961). *Taylor* v. *Louisiana* overruled this aspect of *Hoyt* and held that such an exemption was unconstitutional because it violated "a defendant's Sixth Amendment right to a jury drawn from a fair cross-section of the community." 43 U.S.L.W. 4171.

3. In the instant case, as in *Taylor*, every woman was exempt from jury duty regardless of whether jury service might in fact work no hardship. Here, as in *Taylor*, the exemption was not limited to women with children or husbands, but applied to all women without regard to age, occupation, or marital status.

4. In the instant case women were exempted from service if they indicated on a jury questionnaire that they did not want to serve. In *Taylor* women were exempted unless they asked to serve. Nothing in this Court's decision in *Taylor* suggests that this difference is of constitutional significance; indeed *Hoyt* v. *Florida* indicated that the validity of such an "exemption" must be judged, not by its voluntariness, but by whether the state could lawfully have achieved the same result through deliberate

exclusion. 368 U.S. at 60-61. In the instant case, prior to the requests for exemption, women constituted 55.66% of the proposed jury panel. But 1078 of these women indicated that they desired to be excused from jury duty,[1] thus reducing the proportion of women on the panel to 37.90%, compared to 52.68% of the county population over 21.

5. This case does not present any problem of retroactive application. Compare *Daniel* v. *Louisiana*, 43 U.S. L.W. 3415 (1975). This is a civil action seeking prospective injunctive relief to require the defendants to establish for future use a jury panel drawn from a fair cross-section of the community.

6. The plaintiffs in this action include individuals facing trial in Dougherty County as well as black and female citizens aggrieved by their exclusion from jury service. Thus this case does not present the questions of standing posed by *Edwards* v. *Healy*, No. 73-759.

For the above reasons petitioners respectfully request that the Court grant leave to amend the Petition for a Writ of Certiorari to add the above question, that the

[1] Transcript of hearing of April 17, 1973, p. 10. The final jury panel was composed of 1689 men and 1031 women. *Id.* p. 14. But for the exclusion there would have been 2109 women.

Petition so amended be granted, and that a Writ of Certiorari issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

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